

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CANDACE NARISSA STURKEY,

Plaintiff,

v.

VETERANS ADMINISTRATION HOSPITAL,

Defendant.

ORDER

08-cv-217-slc

Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all parties to this action. Therefore, for the purpose of issuing this order only, I am assuming jurisdiction over the case.

Plaintiff Candace Narissa Sturkey filed this lawsuit originally in the Circuit Court for Dane County, Wisconsin. She alleges that a laundry truck owned by defendant Veterans' Administrative Hospital hit and damaged her car while it was parked in defendant's parking lot. Defendant has filed a motion to dismiss plaintiff's case on the ground that she failed to exhaust her administrative remedies before filing a tort claim against it. 28 U.S.C. §2401(b)

(requiring claims to be presented “in writing to the appropriate Federal Agency within two years after such claim accrues”). Plaintiff has not responded to defendant’s motion, which I interpret as a concession that she did not file the necessary administrative grievance. Accordingly, I will grant defendant’s motion and dismiss plaintiff’s case without prejudice to her refiling it after she has exhausted her administrative remedies. Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004) (dismissal for failure to exhaust is always without prejudice).

ORDER

IT IS ORDERED that the motion of defendant Veterans’ Administrative Hospital to dismiss plaintiff Candice Sturkey’s case is GRANTED. Plaintiff’s case is dismissed without prejudice to her refiling it after she has exhausted her administrative remedies. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 15th day of July, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge